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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,846	12/28/2001	Linda M. Dorschner	16993 (27839-785)	9653
45736 7590 02/12/2009 Christopher M. Goff (27839) ARMSTRONG TEASDALE LLP ONE METROPOLITAN SQUARE SUITE 2600 ST. LOUIS, MO 63102				
EXAMINER REICHEL, KARIN M				
ART UNIT 3761		PAPER NUMBER		
NOTIFICATION DATE 02/12/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USpatents@armstrongteasdale.com

### Office Action Summary

**Application No.**

10/034,846

**Applicant(s)**

DORSCHNER, LINDA M.

**Examiner**

Karin M. Reichle

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 70-94, 96-98, 100-104, and 106-111 is/are pending in the application.
- 4a) Of the above claim(s) 70-82, 94, 96-98, 103 and 104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 83-93, 100-102, 106-111 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11-26-08 has been entered.

### *Election/Restrictions*

1a. Claims 70-82, 94, 96-98, 103 and 104 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b). Election was made **without** traverse.

### *Claim Rejections - 35 USC § 112*

2. Claims 83-93, 100-102 and 106-111 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 107, 109 and 111, and thereby the claims that depend therefrom, now further require the absorbent article include a front portion, a back portion, and a middle portion interconnecting the front and back portions, and the absorbent core be disposed at least in the front portion and the middle portion of the article, the surface area of

the absorbent core being greater in the front portion of the article than in the back portion and middle portion, and the surface area of the absorbent core being greater in middle portion of the article than in the back portion in combination with the other previously claimed structure. A cursory review of the application did not reveal the support for such combination. If Applicant maintains such claim language the specific portion of the original specification which provides support for the entire scope of the combination of each claim in a single embodiment must be set forth. See also response to arguments *infra*.

### ***Claim Language Interpretation***

3. Various claim terms have been defined on page 4, line 9-page 8, line 10. All other terminology will be given its common meaning, i.e. dictionary definition. For example, “adjacent” as defined by the dictionary means “close to, lying near”, i.e. is considered relative terminology. See especially page 6, lines 22-25 and 16-18, e.g. “bonded” includes both direct and indirect bonding, and page 5, last 5 lines, i.e. at a minimum “stretchable” means extendable, e.g. a gathered material is extendable, i.e. stretchable, to its ungathered length. With regard to claim 83, claim 107, lines 9-11, claim 108, claim 109, lines 7-8, and claim 110, it is noted that “being stretchable along substantially the entire...of the” “cover” or “liner” does not require that the cover or liner must be stretchable in that direction along the entire dimension, e.g. “being stretchable along the entire length of the cover” is interpreted to mean that the cover is “stretchable” in at least one or some direction at each point along a length which length runs the entirety of the cover, e.g. if the outer cover is gathered in some direction at each point along a length which length runs the entirety of the cover such would be considered to meet the claim

language. Similar language with respect to the liner or width will be interpreted similarly. Note also the 9-6-07 BPAI decision at the paragraph bridging pages 8-9 thereof. With regard to the claims and the discussion in the preceding paragraph, see MPEP 2163.06, I.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 83-93, 100-102 and 106-111 are under 35 U.S.C. 103(a) as being unpatentable over Roe et al '673, and thereby, by incorporation, Alemany '735, in view of Morman '913 and Divo '714.

Claims 83, 91-92, 100-102 and 106-111: see Claim Language Interpretation section *supra* and '673 at Figures 1 and 3-4, the abstract, col. 1, lines 16-46, col. 4, lines 43-50, col. 6, lines 20-26 and 29-35, col. 22, Table 1, Sample X, col. 22, lines 56 et seq, col. 23, lines 5-17, col. 25, lines 19-45, col. 9, lines 16-28 and 47-55, col. 10, line 6-11, col. 21, lines 20-29, i.e. surface area of core 28 is less than or equal to "about" 50% of the surface area of the article, liner is 24, cover is 26. It is noted that the terminology "about" allows some leeway from the dimension it describes. With regard to the front edge being closer to the front end than the back edge is to the back end, see col. 4, lines 43-50 and Figures 1 and 3-4. The surface area of the portion of the core which extends into the front half of the article has a surface area which is less than about 30% of the surface area of the front half of the article, see again col. 23, lines 5-9. It is noted the article includes both the chassis 22 and the belt 32. With regard to the "bond" language, see col. 8, lines 57-59 and col. 9, lines 31-34 as well as the Claim Language Interpretation section *supra*.

With regard to the stretchability of the liner and cover along substantially the entire length and/or width thereof, or “adjacent” front and back edges of the core, see the Claim Language Interpretation section supra as well as the 9-6-07 BPAI decision at page 8, lines 18-20 and page 10, lines 15-16, i.e. ‘673 teaches a back sheet or outer cover of flexible material which conforms to the body which can comprise various materials but does not explicitly teach such are extensible or elastic. This also applies to the similarly described liner/topsheet of ‘673. However see the portions of ‘673 cited supra as well as page 10, lines 8-14 (i.e. ‘673 teaches the desire for a good/snug fit and clothlike aesthetics as well as economic and manufacturing efficiency, the materials of the backsheet/outer cover and topsheet/liner, the preference to make the nonextensible materials of such extensible where extensibility of the article is desired, etc). Furthermore, see page 11 of the 9-6-07 BPAI decision as well as Divo et al at, e.g., col. 1, lines 3-12, col. 2, lines 50-53, col. 3, lines 5-8 and 29-55, col. 4, lines 35-56, col. 5, lines 36-56, col. 6, lines 31-39, i.e. backsheet/outer cover and/or topsheet/liner may consist of rather than just merely comprise the disclosed composite elastic member, col. 8, lines 6-33, the sentence bridging cols. 8-9, col. 9, lines 28-31, and 46-48, col. 10, lines 1-19, i.e. SIS adhesive applied by a melt blown process is used to attach nonelastic nonwoven layer to elastic layer, col. 14, lines 28-41 and col. 15, lines 16-41 (note the similarity of materials of the backsheet/outer cover, topsheet/liner and composite with those of the backsheet/outer cover and topsheet/liner of ‘673) and claims, and Morman ’913 at the abstract (Note “is extensible and retractable in at least one dimension”), page 1, lines 15-19, page 5, lines 1-26, the paragraph bridging pages 8-9, page 13, line 19-page 16, line 4, page 18, lines 3-15 and page 19, lines 8-14, and claims (i.e. known to use extensible retractable necked laminate materials, which materials are similar to those of the

backsheet/outer cover and topsheet/liner of '673, in diapers to improve fit and clothlike appearance). Therefore to make the backsheet/outer cover and/or topsheet/liner of '673 an extensible/elastic backsheet/outer cover and/or topsheet/liner, i.e. a composite elastic member as taught by Divo '714 or a necked laminate as taught by Morman '913, i.e. as claimed, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such would provide a better conforming, i.e. snugger, and aesthetically pleasing fit and clothlike appearance while being efficient, both economically and with respect to manufacturing, and the desire of such by '673 and/or the recognition that the use of such materials to make such article components, i.e. backsheet/outer cover and/or topsheet/line consisting of such, is well known. In so doing the prior art combination necessarily and inevitably teaches the stretchability as claimed in combination with the other claimed features.

Claims 107, 109 and 111, and thereby the claims that depend therefrom, now further require 1) the absorbent article include a front portion, a back portion, and a middle portion interconnecting the front and back portions, 2) the absorbent core be disposed at least in the front portion and the middle portion of the article, 3) the surface area of the absorbent core being greater in the front portion of the article than in the back portion and middle portion, and 4) the surface area of the absorbent core being greater in middle portion of the article than in the back portion. It is noted that the portions of the article relative to the overall article, e.g. the percentage thereof, has not been claimed. With regard to 1) and 2), see, e.g., the Figures of '673 and the discussion supra. With regard to 3) and 4), see col. 8, lines 9-55 of '673 and thereby, by incorporation, '738 at, e.g., Figure 5, col. 7, lines 25-28, and col. 18, lines 42-61, i.e. due to the varying thickness the front portion of 550, e.g. a front 1/3 of the core, has a surface area greater

than a rear portion of 550, e.g. a middle 1/3 of the core, e.g. includes the terraced section, and rear portion 548, i.e. a rear 1/3 portion of the core, and such rear portion of 550, i.e. the middle portion, has a surface area greater than that of the rear portion 548. Thus there is sufficient factual basis for one to conclude that such claimed structure 1)-4) would also be necessarily and inevitably/obviously present in the structure of the prior art. See also response to arguments section *infra*.

Claims 84-89: Note the terminology "is capable....cover" recite capability of the claimed structure. See also the instant specification at page 17, last two paragraphs and page 19, first full paragraph (note "09/455513" and priority documents on the first page of '913) as well as the cited portions of prior art *supra*, e.g., the same materials, col. 8, lines 6-33, the sentence bridging cols. 8-9, col. 9, lines 28-31, 46-48 of '714 (note 30 gm/f per inch is about .12 N/cm) and the discussion of claims *supra* (i.e. the prior art teaches the claimed structure). Thus there is sufficient factual basis for one to conclude that such capabilities of such claimed structure would also be necessarily and inevitably/obviously present in the same structure of the prior art.

Claim 93: Applicant claims an outer cover comprising spunbond polypropylene laminated with an SIS adhesive (Applicant's attention is also invited to definition of "nonwoven" in Materials Handbook, i.e. includes spunbond polyolefins, i.e. polypropylene) and the cited portions of the prior art *supra*, e.g. Divo et al at col. 10, lines 8-15, i.e. SIS adhesive applied by a melt blown process is used to attach nonelastic "nonwoven" of polypropylene.

Claim 90: See Morman '913 at the abstract, page 18, lines 3-15 and page 19, lines 12-14, i.e. necked laminate of claimed materials.



***Response to Arguments***

6. Applicant's remarks have been carefully considered but are deemed not persuasive in light of the scope of disclosure of the application as originally filed, the claim language and/or the teachings of the prior art discussed supra. Specifically, Applicant's arguments on pages 2-3 with regard to the 112 rejection have been considered but are deemed not persuasive. First Applicant relies upon Figures 1-3 for support. However, Figure 1 is directed to the prior art invention, not the instant invention. Figure 2 is an exploded view which is not clear how the portion of core 3 relate to the various portions of the article. Figure 3 is also not clear with regard to the portion of the core in the middle portion 63 of the article as compared to the portion of the core in the front portion 61 as one is wider than the other but the other is longer than the one. Also it is not disclosed the drawings are drawn to scale. Finally, the paragraphs referred to, e.g. 57 and 123, are not clear since the paragraphs of the specification are not numbered. Note again 714.02, second to last paragraph. Applicant's remarks on pages 4-10 with regard to the prior art have been considered but also are not deemed persuasive. First again the paragraphs referred to, e.g. 120, are not clear since the paragraphs of the specification are not numbered. Second, the arguments are narrower than the disclosure and/or the claim language and/or the teachings of the art. Specifically, with regard to the discussion of what such paragraph 120 describes in the arguments, there is no definition, explicit or otherwise, which limits the surface area only to the major faces and not the thickness as argued ("surface area" referenced in the claims of the present application are a function solely of the length and width of the absorbent core, the thickness playing no part of the surface area"), i.e. "essentially" is not entirely or completely, see definition provided with this action. Nor does the claim language itself limit the

surface area claimed therein only to that of the major surfaces. Finally, absent such claim language/definition the prior art teaches the surface areas as claimed.

### ***Conclusion***

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/  
Primary Examiner, Art Unit 3761

February 9, 2009